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7 IN THE UNITED STATES DISTRICT COURT

8 FOR THE DISTRICT OF ARIZONA

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 Jesus Gonzalez Arellano,

13 Defendant.
14

4:16-cr-01749-RM-1

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16 **SENTENCING MEMORANDUM**
17 **IN SUPPORT OF PSR's**
18 **RECOMMENDED SENTENCE OF**
19 **TIME SERVED PLUS 24-MONTHS**
20 **SUPERVISED RELEASE**

21 COMES NOW the Defendant, Jesus Arellano, by and through his undersigned
22 counsel, and hereby submits this Memorandum in support of the sentence
23 recommended in the Presentence Investigation Report ("PSR"), which is to time-served
24 plus 24-months supervised release. This sentence is within the Guidelines range and is
25 sufficient, but not greater than necessary, to achieve the purposes of sentencing
26 pursuant to 18 U.S.C. § 3553. The basis for this request is set forth more fully in the
Memorandum below.

MEMORANDUM OF POINTS AND AUTHORITIES

1. *The Sentencing Framework*

Congress enacted 18 U.S.C. § 3553(a) in order to ensure that judges impose sentences that are “sufficient, but not greater than necessary, to comply with the purposes” of sentencing, such as deterrence, punishment, and public safety. 18 U.S.C. § 3553(a), (a)(2); *United States v. Trujillo*, 713 F.3d 1003, 1008 (9th Cir. 2013) (citing *Pepper v. United States*, 562 U.S. 467 (2011)). The factors include: the nature and circumstances of the offense and the history and characteristics of the defendant; the purposes of sentencing; the kinds of sentences available; the sentences and ranges established by the Sentencing Guidelines; relevant policy statements issued by the Sentencing Commission; the need to avoid unwarranted sentencing disparities among similarly situated defendants; and the need to provide restitution to victims. 18 U.S.C. § 3553(a). These factors represent the major sentencing considerations of “retribution, deterrence, incapacitation and rehabilitation.” *Tapia v. United States*, 564 U.S. 319, 325 (2011). Accordingly, the Supreme Court has consistently instructed that “the punishment should fit the offender and not merely the crime,” and thus judges should use “the fullest information possible concerning the defendant’s life and characteristics” to determine the appropriate sentence. *Trujillo*, 713 F.3d at 1008-09 (citing *Pepper*, 562 U.S. at 487-88, and quoting *Williams v. New York*, 337 U.S. 241, 246-47 (1949)); *Gall v. United States*, 552 U.S. 38, 49-50 (2007) (“[A]fter giving both parties an opportunity

1 to argue for whatever sentence they deem appropriate, the district judge should then
2 consider all of the § 3553(a) factors to determine whether they support the sentence
3 requested by a party.”); accord *United States v. Ringgold*, 571 F.3d 948, 950 (9th Cir.
4 2009). Importantly, the Guidelines place no limit on the number of potential factors that
5 may warrant a variance from the advisory range. *Burns v. United States*, 501 U.S. 129,
6 136-137 (1991).

8 2. *Advisory Sentencing Guidelines Range*

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10 18 U.S.C. § 3553(a)(4) requires the Court to consider the kinds of sentences
11 available to the defendant. Mr. Arellano does not object to the base offense level
12 calculation set forth in the Presentence Report (“PSR”), which is 6. PSR at ¶¶ 19-28. In
13 fact, he concurred with them in his written plea agreement. Doc. 89, p. 3. Mr.
14 Arellano’s criminal history score is zero, thus the advisory Guidelines sentencing range
15 is 0-6 months’ imprisonment, but a period of confinement is not required and neither
16 the Government nor the Probation Department is recommending that Mr. Arellano
17 receive a sentence of imprisonment. PSR ¶¶ 4, 62, 67, 76 and p. 14.

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20 Mr. Arellano was in custody following his arrest for 6 days before he was
21 released on his own recognizance, thus he may be placed on supervised release for a
22 term not to exceed three years. PSR ¶¶ 63-64. The probation department is
23 recommending that Mr. Arellano be sentenced to 24-months supervised release, with
24 standard and special conditions. PSR, pp. 14-16. This disposition is consistent with the
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1 plea agreement and the Government's recommendation, and is appropriate based on the
2 §3553 factors, discussed more fully below.

3 *3. Nature and Circumstances of the Offense*

4 18 U.S.C. §3553(a)(1) requires the Court to consider "the nature and
5 circumstances of the offense" in order to determine how to sufficiently meet the
6 objectives of sentencing. A detailed recitation of the facts is set forth at ¶¶ 5-15 of the
7 PSR. The facts underlying the offense to which Mr. Arellano has pleaded guilty, False
8 Statement, are found at pages 7-8 of the plea agreement. (Doc. 89.)
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11 With his guilty plea, Mr. Arellano acknowledges his actions to conceal the
12 identity of a person who was the true source of information. (This was done in an effort
13 to protect that individual, who was the son of a close family friend.) It is important to
14 note, however, that Mr. Arellano was not motivated by greed, nor did he receive any
15 personal benefit for his conduct in protecting his source's identity (a fact that the
16 government does not dispute). He made a mistake, an error in judgment, which he
17 deeply regrets and for which he accepts total responsibility. PSR ¶ 18.
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20 *4. History and Characteristics of the Defendant*

21 18 U.S.C. §3553(a)(1) requires the Court to consider "the history and
22 characteristics of the defendant" in order to determine how to sufficiently meet the
23 objectives of sentencing. This duty reflects the defendant's right to individualized
24 sentencing. *Beckles v. United States*, 137 S.Ct. 886, 896 (2017); 18 U.S.C. § 3661 ("No
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1 limitation shall be placed on the information concerning the background, character, and
2 conduct of a person convicted of an offense which a court of the United States may
3 receive and consider for purposes of imposing an appropriate sentence.”).

4 Mr. Arellano is a native of Douglas, Arizona. He was raised by his maternal
5 grandparents in Agua Prieta, while he attended school in Douglas where his parents and
6 siblings lived. PSR at ¶¶ 37-38, 42. The border, however, presented no barrier to this
7 close-knit family. The Court has received letters from Mr. Arellano’s sister and brother,
8 each of which attest to their admiration, respect and love for their brother, whom they
9 regard as a role model.
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12 Mr. Arellano graduated from Douglas High School in 1984, and immediately
13 joined the Navy. PSR at ¶¶ 39, 50. He served for ten years as a gunner’s mate and
14 security guard, primarily in San Diego, Chicago and Iceland. PSR at ¶¶ 50, 54. In
15 addition, Mr. Arellano was deployed to the Persian Gulf. During this tenure in service
16 to this country Mr. Arellano earned numerous awards and commendations. PSR at ¶ 51.

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18 In 1993 Mr. Arellano married Jennifer Benzine while he was stationed in
19 Chicago. PSR ¶ 40. They have a 20-year-old son, Dominic. Id. The family returned to
20 Douglas following Mr. Arellano’s 1995 honorable discharge from the Navy. He quickly
21 gained employment as an inspector for the U.S. Customs Service, and then he promoted
22 to the position of special agent. PSR at ¶¶ 53, 54. Since Mr. Arellano’s 2016
23 administrative leave from HSI he has owned and operated a food truck and catering
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1 business in Douglas, earning approximately \$17,000 per year. PSR at ¶ 52. In the
2 twenty years that Mr. Arellano worked for HSI, he contributed (as all federal workers
3 do) to a Thrift Savings Account. These funds have provided Mr. Arellano with the
4 ability to retain counsel and to cover his living expenses while this case has been
5 pending. PSR ¶¶ 56-60. It is expected that Mr. Arellano will reach an agreement with
6 HSI regarding the terms of his separation. Once this happens, Mr. Arellano will be
7 entitled to receive a pension that he will use to supplement his income as necessary to
8 meet his financial obligations.
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11 Mr. Arellano continues to reside in the family home, which is located on 10 acres
12 near Douglas. Pretrial Services officers have inspected the home and determined it is
13 suitable for Mr. Arellano to continue living there if placed on supervised release. PSR ¶
14 40. Currently, Mr. Arellano's wife and son are living in Iowa in order to care for her
15 mother. Id. When interviewed, Mrs. Arellano told the probation officer that the stress of
16 this criminal investigation has had permanent negative consequences on Mr. Arellano's
17 mental health. PSR ¶ 41.
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20 Mr. Arellano's mental health status is also discussed in the plea agreement and
21 PSR. As a proud veteran and law enforcement officer, Mr. Arellano is incredibly
22 embarrassed, humiliated and ashamed of his wrongdoing in this case. He twice nearly
23 committed suicide because of these feelings. PSR ¶¶ 44. Mr. Arellano has been
24 diagnosed with PTSD and other mental health disorders that likely contributed to his
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1 poor decision making in this case. PSR ¶ 45, p. 14. Fortunately, he sees a therapist on a
2 weekly basis and for the past two years has begun to address these issues. Id. Mrs.
3 Arellano expressed the improvement she has seen in the past six months. PSR ¶ 41.
4 Although Mr. Arellano has no intention of discontinuing therapy, he would welcome
5 and abide by a release condition requiring him to continue mental health counseling.
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7 *5. Lack of Criminal History, Deterrence, Recidivism*

8 Section 3553(a)(2)(B) requires the Court to consider “the need for the sentence
9 imposed...to afford adequate deterrence to criminal conduct.” Mr. Arellano has zero
10 criminal history points because he has never been arrested, charged or convicted of any
11 criminal offense, whether as a juvenile or an adult, prior to his involvement in the case
12 presently before the Court. PSR ¶¶ 29-35. In addition, Mr. Arellano has been under the
13 supervision of Pretrial Services for more than two years, since his initial appearance on
14 August 18, 2016. PSR ¶ 1. Mr. Arellano has complied with his release conditions
15 without issue or incident, including participating in mental health counseling. Id.
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18 Mr. Arellano’s lack of criminal history and long-time compliance with conditions
19 of release strongly suggests that supervised release will afford an adequate deterrence to
20 criminal conduct. 18 U.S.C. § 3553(a)(2)(B). These factors, as well as the other factors
21 mentioned herein, make Mr. Arellano a low risk to recidivate and thus he poses little
22 danger, if any, to the public. 18 U.S.C. 3553(a)(2)(C); PSR ¶¶ 84, 85.
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2 6. *The Seriousness of the Offense, Respect for the Law, Just Punishment*

3 Section 3553(a)(2)(A) is generally viewed as the punitive or retributive
4 component of § 3553(a). *See Tapia*, 564 U.S. at 325; *United States v. Miqbel*, 444 F.3d
5 1173, 1182-83 (9th Cir. 2006). Where, as here, the offense is not violent and the
6 defendant is a first offender, Congress has encouraged the Sentencing Commission to
7 craft Guidelines that reflect the general appropriateness of imposing a sentence other
8 than imprisonment. 28 U.S.C. § 922(j). The seriousness of Mr. Arellano's offense is
9 reflected in a term of supervised release. The loss of freedom that comes with
10 supervision is a substantial penalty. In addition, a felony conviction results the denial of
11 important civil rights, and here, further resulted in Mr. Arellano's loss of employment.
12 Supervised Release will undoubtedly promote Mr. Arellano's respect for the law and
13 provide just punishment.
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17 7. *Conclusion*

18 For all the foregoing reasons, this Court should impose a sentence of time-served
19 plus 24-months supervised release on Mr. Arellano. This disposition is sufficient, but
20 not greater than necessary, to achieve the goals of sentencing. 18 U.S.C. § 3553(a).
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23 Respectfully submitted this 23rd day of January, 2019.

24 LAW OFFICES OF SEAN CHAPMAN, P.C.

25 BY: /s/ Sean Chapman
26 Sean Chapman

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Hon. Rosemary Marquez
United States District Court

Gordon Davenport
Assistant United States Attorney